

House Calendar

Wednesday, April 15, 2015

99th DAY OF THE BIENNIAL SESSION

House Convenes at 1:00 P.M.

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ACTION CALENDAR

Action Postponed Until April 15, 2015

Senate Proposal of Amendment to House Proposal of Amendment

S. 13

An act relating to the Vermont Sex Offender Registry

The Senate concurs in the House proposal of amendment with the following proposal of amendment thereto:

In Sec. 9, (Effective Dates), subsection (b), by striking out subdivision (3) in its entirety.

(For House Proposal of Amendment see House Journal 3/31/2015)

NOTICE CALENDAR

Favorable with Amendment

S. 9

An act relating to improving Vermont's system for protecting children from abuse and neglect

Rep. Pugh of South Burlington, for the Committee on **Human Services**, recommends that the House propose to the Senate that the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

* * * Legislative Findings * * *

Sec. 1. LEGISLATIVE FINDINGS

(a) In 2014, the tragic deaths of two children exposed problems with Vermont's system intended to protect children from abuse and neglect. This act is intended to address these problems and implement the recommendations of the Joint Legislative Committee on Child Protection created by 2014 Acts and Resolves No. 179, Sec. C.109 and improve our State's system for protecting our children to help prevent future tragedies.

(b) To better prevent child abuse and neglect, Vermont must invest in proven strategies to support and strengthen families.

(c) To better protect Vermont's children from abuse and neglect, and to address the increasing burden of drug abuse and other factors that are ripping families apart, the General Assembly believes that our State's child protection system must be focused on the safety and best interests of children,

comprehensive, and properly funded. This system must ensure that:

(1) the dedicated frontline professionals, including guardians ad litem, who struggle to handle the seemingly ever-increasing caseloads have the support, training, and resources necessary to do their job;

(2) children who have suffered abuse and neglect can find safe, nurturing, and permanent homes, whether with their custodial parents, relatives, or other caring families and individuals;

(3) the most serious cases of abuse are thoroughly investigated and prosecuted if appropriate;

(4) courts have the information and tools necessary to make the best possible decisions;

(5) all participants in the child protection system, from the frontline caseworker to the judge determining ultimate custody, work together to prioritize the child's safety and best interests; and

(6) an effective oversight structure is established.

(d) This act is only the beginning of what must be an ongoing process in which the House and Senate Committees on Judiciary, the Senate Committee on Health and Welfare, the House Committee on Human Services, in consultation with the Senate and House Committees on Appropriations, continue to enhance the statewide approach to the prevention of child abuse and neglect.

* * * Agency of Human Services; Evidence-Informed Models * * *

Sec. 2. AGENCY OF HUMAN SERVICES EVIDENCE-INFORMED MODELS

The Secretary of Human Services shall identify and utilize evidence-informed models of serving families that prioritize child safety and prevention of child abuse and neglect through early interventions with high risk families that develop family strengths and reduce the impact of adverse childhood experiences. The Secretary shall make recommendations in the FY2017 budget that reflect the utilization of these models.

* * * Human Services; Child Welfare Services; Definitions * * *

Sec. 3. 33 V.S.A. § 4912 is amended to read:

§ 4912. DEFINITIONS

As used in this subchapter:

* * *

(14) “Risk of harm” means a significant danger that a child will suffer serious harm by other than accidental means, which harm would be likely to cause physical injury, neglect, ~~emotional maltreatment~~, or sexual abuse, including as the result of:

(A) a single, egregious act that has caused the child to be at significant risk of serious physical injury;

(B) the production or preproduction of methamphetamines when a child is actually present;

(C) failing to provide supervision or care appropriate for the child’s age or development and as a result, the child is at significant risk of serious physical injury;

(D) failing to provide supervision or care appropriate for the child’s age or development due to use of illegal substances, or misuse of prescription drugs or alcohol;

(E) failing to supervise appropriately a child in a situation in which drugs, alcohol, or drug paraphernalia are accessible to the child; and

(F) a registered sex offender or person substantiated for sexually abusing a child residing with or spending unsupervised time with a child.

* * *

(17) “Serious physical injury” means any intentional or malicious conduct that leaves a child with an injury or injuries that leave significant or permanent bodily damage or disfigurement, or both, or that leaves a child without the ability to perform normal functions of daily living.

* * * Confidentiality * * *

Sec. 4. 33 V.S.A. § 4913 is amended to read:

§ 4913. REPORTING CHILD ABUSE AND NEGLECT; REMEDIAL ACTION

(a) Any physician, surgeon, osteopath, chiropractor, or physician assistant licensed, certified, or registered under the provisions of Title 26, any resident physician, intern, or any hospital administrator in any hospital in this State, whether or not so registered, and any registered nurse, licensed practical nurse, medical examiner, emergency medical personnel as defined in 24 V.S.A. § 2651(6), dentist, psychologist, pharmacist, any other health care provider, child care worker, school superintendent, headmaster of an approved or recognized independent school as defined in 16 V.S.A. § 11, school teacher, student teacher, school librarian, school principal, school guidance counselor, and any other individual who is employed by a school district or an approved

or recognized independent school, or who is contracted and paid by a school district or an approved or recognized independent school to provide student services, mental health professional, social worker, probation officer, any employee, contractor, and grantee of the Agency of Human Services who have contact with clients, police officer, camp owner, camp administrator, camp counselor, or member of the clergy who has reasonable cause to believe that any child has been abused or neglected shall report ~~or cause a report to be made~~ in accordance with the provisions of section 4914 of this title within 24 hours. As used in this subsection, “camp” includes any residential or nonresidential recreational program.

(b)(1) The Commissioner shall inform the person who made the report under subsection (a) of this section:

~~(1)~~(A) whether the report was accepted as a valid allegation of abuse or neglect;

~~(2)~~(B) whether an assessment was conducted and, if so, whether a need for services was found; and

~~(3)~~(C) whether an investigation was conducted and, if so, whether it resulted in a substantiation.

(2) Upon request, the Commissioner shall provide relevant information contained in the case records concerning a person’s report to a person who:

(A) made the report under subsection (a) of this section; and

(B) is engaged in an ongoing working relationship with the child or family who is the subject of the report.

(3) Any information disclosed under subdivision (2) of this subsection shall not be disseminated by the mandated reporter requesting the information. A person who intentionally violates the confidentiality provisions of this section shall be fined not more than \$2,000.00.

(4) In providing information under subdivision (2) of this subsection, the Department may withhold information that could:

(A) compromise the safety of the reporter or the child or family who is the subject of the report; or

(B) threaten the emotional well-being of the child.

* * *

Sec. 5. 33 V.S.A. § 4921 is amended to read:

§ 4921. DEPARTMENT’S RECORDS OF ABUSE AND NEGLECT

(a) The Commissioner shall maintain all records of all investigations, assessments, reviews, and responses initiated under this subchapter. The Department may use and disclose information from such records in the usual course of its business, including to assess future risk to children, to provide appropriate services to the child or members of the child's family, or for other legal purposes.

(b) The Commissioner shall promptly inform the parents, if known, or guardian of the child that a report has been accepted as a valid allegation pursuant to subsection 4915(b) of this title and the Department's response to the report. The Department shall inform the parent or guardian of his or her ability to request records pursuant to subsection (c) of this section. This section shall not apply if the parent or guardian is the subject of the investigation.

(c) Upon request, the redacted investigation file shall be disclosed to:

(1) the child's parents, foster parent, or guardian, absent good cause shown by the Department, provided that the child's parent, foster parent, or guardian is not the subject of the investigation; and

(2) the person alleged to have abused or neglected the child, as provided for in subsection 4916a(d) of this title.

(d) Upon request, Department records created under this subchapter shall be disclosed to:

(1) the ~~court~~ Court, parties to the juvenile proceeding, and the child's guardian ad litem if there is a pending juvenile proceeding or if the child is in the custody of the Commissioner;

(2) the Commissioner or person designated by the Commissioner to receive such records;

(3) persons assigned by the Commissioner to conduct investigations;

(4) law enforcement officers engaged in a joint investigation with the Department, an ~~assistant attorney general~~ Assistant Attorney General, or a ~~state's attorney~~ State's Attorney; and

(5) other State agencies conducting related inquiries or proceedings; ~~and.~~

(6) ~~a Probate Division of the Superior Court involved in guardianship proceedings. The Probate Division of the Superior Court shall provide a copy of the record to the respondent, the respondent's attorney, the petitioner, the guardian upon appointment, and any other individual, including the proposed guardian, determined by the Court to have a strong interest in the welfare of~~

~~the respondent.~~ [Repealed.]

(e)(1) Upon request, relevant Department records or information created under this subchapter ~~may~~ shall be disclosed to:

~~(A) service providers working with a person or child who is the subject of the report; and~~ A person, agency, or organization, including a multidisciplinary team empaneled under section 4917 of this title, authorized to diagnose, care for, treat, or supervise a child or family who is the subject of a report or record created under this subchapter, or who is responsible for the child's health or welfare.

(B) Health and mental health care providers working directly with the child or family who is the subject of the report or record.

(C) Educators working directly with the child or family who is the subject of the report or record.

(D) Licensed or approved foster care givers for the child.

(E) Mandated reporters as defined by section 4913 of this subchapter, making a report in accordance with the provisions of section 4914 of this subchapter and engaging in an ongoing working relationship with the child or family who is the subject of the report.

(F) A Family Division of the Superior Court involved in any proceeding in which custody of a child or parent-child contact is at issue.

(G) A Probate Division of the Superior Court involved in guardianship proceedings. The Probate Division of the Superior Court shall provide a copy of the record to the respondent, the respondent's attorney, the petitioner, the guardian upon appointment, and any other individual, including the proposed guardian, determined by the Court to have a strong interest in the welfare of the respondent.

~~(H) other~~ Other governmental entities for purposes of child protection.

(2) Determinations of relevancy shall be made by the Department.

(3) In providing records or information under this subsection (e), the Department may withhold information that could:

(A) compromise the safety of the reporter or the child or family who is the subject of the report; or

(B) threaten the emotional well-being of the child.

(4) In providing records or information under this section, the Department may also provide other records related to its child protection

activities for the child.

(5) Any persons or agencies authorized to receive confidential information under this section may share such information with other persons or agencies authorized to receive confidential information under this section for the purposes of providing services and benefits to the children and families those persons or agencies mutually serve.

(f) Any records or information disclosed under this section and information relating to the contents of those records or reports shall not be disseminated by the receiving persons or agencies to any persons or agencies, other than to those persons or agencies authorized to receive information pursuant to this section. A person who intentionally violates the confidentiality provisions of this section shall be fined not more than \$2,000.00.

Sec. 6. 33 V.S.A. § 5110 is amended to read:

§ 5110. CONDUCT OF HEARINGS

(a) Hearings under the juvenile judicial proceedings chapters shall be conducted by the Court without a jury and shall be confidential.

(b) The general public shall be excluded from hearings under the juvenile judicial proceedings chapters, and only the parties, their counsel, witnesses, persons accompanying a party for his or her assistance, and such other persons as the Court finds to have a proper interest in the case or in the work of the Court, including a foster parent or a representative of a residential program where the child resides, may be admitted by the Court. An individual without party status seeking inclusion in the hearing may petition the Court for admittance by filing a request with the clerk of the Court. This subsection shall not prohibit a victim's exercise of his or her rights under sections 5233 and 5234 of this title, and as otherwise provided by law.

(c) There shall be no publicity given by any person to any proceedings under the authority of the juvenile judicial proceedings chapters except with the consent of the child, the child's guardian ad litem, and the child's parent, guardian, or custodian. A person who violates this provision may be subject to contempt proceedings pursuant to Rule 16 of the Vermont Rules for Family Proceedings.

* * * Juvenile Proceedings; General Provisions; Children in Need of Care or Supervision; Request for an Emergency Care Order * * *

Sec. 7. 33 V.S.A. § 5302 is amended to read:

§ 5302. REQUEST FOR EMERGENCY CARE ORDER

(a) If an officer takes a child into custody pursuant to ~~subdivision~~ section

5301(1) ~~or (2)~~ of this title, the officer shall immediately notify the child's custodial parent, guardian, or custodian and release the child to the care of the child's custodial parent, guardian, or custodian unless the officer determines that the child's immediate welfare requires the child's continued absence from the home.

(b) If the officer determines that the child's immediate welfare requires the child's continued absence from the home, ~~the officer shall:~~

(1) ~~Remove~~ The officer shall remove the child from the child's surroundings, contact the Department, and deliver the child to a location designated by the Department. The Department shall have the authority to make reasonable decisions concerning the child's immediate placement, safety, and welfare pending the issuance of an emergency care order.

(2) ~~Prepare~~ The officer or a social worker employed by the Department for Children and Families shall prepare an affidavit in support of a request for an emergency care order and provide the affidavit to the State's Attorney. The affidavit shall include: the reasons for taking the child into custody; and to the degree known, potential placements with which the child is familiar; the names, addresses, and telephone number of the child's parents, guardian, custodian, or care provider; the name, address, and telephone number of any relative who has indicated an interest in taking temporary custody of the child. The officer or social worker shall contact the Department and the Department may prepare an affidavit as a supplement to the affidavit of the law enforcement officer or social worker if the Department has additional information with respect to the child or the family.

* * *

* * * Temporary Care Order; Custody * * *

Sec. 8. 33 V.S.A. § 5308 is amended to read:

§ 5308. TEMPORARY CARE ORDER

(a) The Court shall order that legal custody be returned to the child's custodial parent, guardian, or custodian unless the Court finds by a preponderance of the evidence that a return home would be contrary to the best interests of the child's welfare ~~child~~ because any one of the following exists:

(1) A return of legal custody could result in substantial danger to the physical health, mental health, welfare, or safety of the child.

(2) The child or another child residing in the same household has been physically or sexually abused by a custodial parent, guardian, or custodian, or by a member of the child's household, or another person known to the custodial parent, guardian, or custodian.

(3) The child or another child residing in the same household is at substantial risk of physical or sexual abuse by a custodial parent, guardian, or custodian, or by a member of the child's household, or another person known to the custodial parent, guardian, or custodian. It shall constitute prima facie evidence that a child is at substantial risk of being physically or sexually abused if:

(A) a custodial parent, guardian, or custodian receives actual notice that a person has committed or is alleged to have committed physical or sexual abuse against a child; and

(B) a custodial parent, guardian, or custodian knowingly or recklessly allows the child to be in the physical presence of the alleged abuser after receiving such notice.

(4) The custodial parent, guardian, or ~~guardian~~ custodian has abandoned the child.

(5) The child or another child in the same household has been neglected and there is substantial risk of harm to the child who is the subject of the petition.

(b) Upon a finding that ~~any of the conditions set forth in subsection (a) of this section exists~~ a return home would be contrary to the best interests of the child, the Court may issue such temporary orders related to the legal custody of the child as it deems necessary and sufficient to protect the welfare and safety of the child, including, ~~in order of preference~~:

(1) ~~A~~ a conditional custody order returning or granting legal custody of the child to the custodial parent, guardian, ~~or custodian~~, noncustodial parent, relative, or a person with a significant relationship with the child, subject to such conditions and limitations as the Court may deem necessary and sufficient ~~to protect the child~~;

~~(2)(A) An order transferring temporary legal custody to a noncustodial parent. Provided that parentage is not contested, upon a request by a noncustodial parent for temporary legal custody and a personal appearance of the noncustodial parent, the noncustodial parent shall present to the Court a care plan that describes the history of the noncustodial parent's contact with the child, including any reasons why contact did not occur, and that addresses:~~

~~(i) the child's need for a safe, secure, and stable home;~~

~~(ii) the child's need for proper and effective care and control; and~~

~~(iii) the child's need for a continuing relationship with the custodial parent, if appropriate.~~

~~(B) The Court shall consider court orders and findings from other proceedings related to the custody of the child.~~

~~(C) The Court shall transfer legal custody to the noncustodial parent unless the Court finds by a preponderance of the evidence that the transfer would be contrary to the child's welfare because any of the following exists:~~

~~(i) The care plan fails to meet the criteria set forth in subdivision (2)(A) of this subsection.~~

~~(ii) Transferring temporary legal custody of the child to the noncustodial parent could result in substantial danger to the physical health, mental health, welfare, or safety of the child.~~

~~(iii) The child or another child residing in the same household as the noncustodial parent has been physically or sexually abused by the noncustodial parent or a member of the noncustodial parent's household, or another person known to the noncustodial parent.~~

~~(iv) The child or another child residing in the same household as the noncustodial parent is at substantial risk of physical or sexual abuse by the noncustodial parent or a member of the noncustodial parent's household, or another person known to the noncustodial parent. It shall constitute prima facie evidence that a child is at substantial risk of being physically or sexually abused if:~~

~~(I) a noncustodial parent receives actual notice that a person has committed or is alleged to have committed physical or sexual abuse against a child; and~~

~~(II) the noncustodial parent knowingly or recklessly allows the child to be in the physical presence of the alleged abuser after receiving such notice.~~

~~(v) The child or another child in the noncustodial parent's household has been neglected, and there is substantial risk of harm to the child who is the subject of the petition.~~

~~(D) If the noncustodial parent's request for temporary custody is contested, the Court may continue the hearing and place the child in the temporary custody of the Department, pending further hearing and resolution of the custody issue. Absent good cause shown, the Court shall hold a further hearing on the issue within 30 days.~~

~~(3) An order transferring temporary legal custody of the child to a relative, provided:~~

~~(A) The relative seeking legal custody is a grandparent, great-~~

~~grandparent, aunt, great aunt, uncle, great uncle, stepparent, sibling, or step-sibling of the child.~~

~~(B) The relative is suitable to care for the child. In determining suitability, the Court shall consider the relationship of the child and the relative and the relative's ability to:~~

~~(i) Provide a safe, secure, and stable environment.~~

~~(ii) Exercise proper and effective care and control of the child.~~

~~(iii) Protect the child from the custodial parent to the degree the Court deems such protection necessary.~~

~~(iv) Support reunification efforts, if any, with the custodial parent.~~

~~(v) Consider providing legal permanency if reunification fails.~~

(2) an order transferring temporary legal custody of the child to a noncustodial parent or to a relative;

(3) an order transferring temporary legal custody of the child to a person with a significant relationship with the child; or

(4) an order transferring temporary legal custody of the child to the Commissioner.

~~(C)(c) The Court shall consider orders and findings from other proceedings relating to the custody of the child, the child's siblings, or children of any adult in the same household as the child.~~

(d) In considering the suitability of a relative under this subdivision (3) an order under subsection (b) of this section, the Court may order the Department to conduct an investigation of a person seeking custody of the child, and the suitability of that person's home, and file a written report of its findings with the Court. The Court may place the child in the temporary custody of the Department Commissioner, pending such investigation.

~~(4) A temporary care order transferring temporary legal custody of the child to a relative who is not listed in subdivision (3)(A) of this subsection or a person with a significant relationship with the child, provided that the criteria in subdivision (3)(B) of this subsection are met. The Court may make such orders as provided in subdivision (3)(C) of this subsection to determine suitability under this subdivision.~~

~~(5) A temporary care order transferring temporary legal custody of the child to the Commissioner.~~

~~(e)(e) If the Court transfers legal custody of the child, the Court shall issue a written temporary care order.~~

(1) The order shall include:

(A) ~~a~~ A finding that remaining in the home is contrary to the ~~child's welfare~~ best interests of the child and the facts upon which that finding is based; ~~and~~.

(B) ~~a~~ A finding as to whether reasonable efforts were made to prevent unnecessary removal of the child from the home. If the Court lacks sufficient evidence to make findings on whether reasonable efforts were made to prevent the removal of the child from the home, that determination shall be made at the next scheduled hearing in the case but, in any event, no later than 60 days after the issuance of the initial order removing a child from the home.

(2) The order may include other provisions as may be ~~necessary for the protection and welfare~~ in the best interests of the child, ~~such as including:~~

(A) ~~establishing parent-child contact under such and terms and conditions as are necessary for the protection of the child. and terms and conditions for that contact;~~

(B) requiring the Department to provide the child with services, if legal custody of the child has been transferred to the Commissioner;

(C) requiring the Department to refer a parent for appropriate assessments and services, including a consideration of the needs of children and parents with disabilities, provided that the child's needs are given primary consideration;

(D) requiring genetic testing if parentage of the child is at issue;

(E) requiring the Department to make diligent efforts to locate the noncustodial parent;

(F) requiring the custodial parent to provide the Department with names of all potential noncustodial parents and relatives of the child; and

(G) establishing protective supervision and requiring the Department to make appropriate service referrals for the child and the family, if legal custody is transferred to an individual other than the Commissioner.

(3) If legal custody of a child is transferred to the Commissioner, the Commissioner shall provide the child with assistance and services. In his or her discretion, the Commissioner may provide assistance and services to other children and families to the extent that funds permit, ~~notwithstanding subdivision (2)(B) of this subsection.~~

~~(d) If a party seeks to modify a temporary care order in order to transfer legal custody of a child from the Commissioner to a relative or a person with a significant relationship with the child, the relative shall be entitled to~~

~~preferential consideration under subdivision (b)(3) of this section, provided that a disposition order has not been issued and the motion is filed within 90 days of the date that legal custody was initially transferred to the Commissioner. [Repealed.]~~

* * * Adoption Act; Postadoption Contact Agreements * * *

Sec. 9. 15A V.S.A. § 1-109 is amended to read:

§ 1-109. TERMINATION OF ORDERS AND AGREEMENTS FOR VISITATION OR COMMUNICATION UPON ADOPTION

When a decree of adoption becomes final, except as provided in Article 4 of this title and 33 V.S.A. § 5124, any order or agreement for visitation or communication with the minor shall be unenforceable.

Sec. 10. 33 V.S.A. § 5124 is added to read:

§ 5124. POSTADOPTION CONTACT AGREEMENTS

(a) Either or both parents and each intended adoptive parent may enter into a postadoption contact agreement regarding communication or contact between either or both parents and the child after the finalization of an adoption by the intended adoptive parent or parents who are parties to the agreement. Such an agreement may be entered into if:

(1) the child is in the custody of the Department for Children and Families;

(2) an order terminating parental rights has not yet been entered; and

(3) either or both parents agree to a voluntary termination of parental rights, including an agreement in a case which began as an involuntary termination of parental rights.

(b) The Court may approve the postadoption contact agreement if:

(1)(A) it determines that the child's best interests will be served by postadoption communication or contact with either or both parents; and

(B) in making a best interests determination, it may look to:

(i) the age of the child;

(ii) the length of time that the child has been under the actual care, custody, and control of a person other than a parent;

(iii) the desires of the child, the child's parents; and the child's intended adoptive parents;

(iv) the child's relationship with and the interrelationships

between the child's parents, the child's intended adoptive parents, the child's siblings, and any other person with a significant relationship with the child;

(v) the willingness of the parents to respect the bond between the child and the child's intended adoptive parents;

(vi) the willingness of the intended adoptive parents to respect the bond between the child and the parents;

(vii) the adjustment to the child's home, school, and community;

(viii) any evidence of abuse or neglect of the child;

(ix) the recommendation of any guardian ad litem involved in the proceeding and actively engaged with the child;

(x) the recommendation of a therapist or mental health care provider working directly with the child; and

(xi) the recommendation of the Department;

(2) it has reviewed and made each of the following a part of the Court record:

(A) a sworn affidavit by the parties to the agreement which affirmatively states that the agreement was entered into knowingly and voluntarily and is not the product of coercion, fraud, or duress and that the parties have not relied on any representations other than those contained in the agreement;

(B) a written acknowledgment by each parent that the termination of parental rights is irrevocable, even if the intended adoption is not finalized, the adoptive parents do not abide by the postadoption contact agreement, or the adoption is later dissolved;

(C) an agreement to the postadoption contact or communication from the child to be adopted, if he or she is 14 years of age or older; and

(D) an agreement to the postadoption contact or communication in writing from the Department, the guardian ad litem, and the attorney for the child.

(c) A postadoption contact agreement must be in writing and signed by each parent and each intended adoptive parent entering into the agreement. There may be separate agreements for each parent. The agreement shall specify:

(1) the form of communication or contact to take place;

(2) the frequency of the communication or contact;

(3) if visits are agreed to, whether supervision shall be required, and if supervision is required, what type of supervision shall be required;

(4) if written communication or exchange of information is agreed upon, whether that will occur directly or through the Vermont Adoption Registry, set forth in 15A V.S.A. § 6-103;

(5) if the Adoption Registry shall act as an intermediary for written communication, that the signing parties will keep their addresses updated with the Adoption Registry;

(6) that failure to provide contact due to the child's illness or other good cause shall not constitute grounds for an enforcement proceeding;

(7) that the right of the signing parties to change their residence is not impaired by the agreement;

(8) an acknowledgment by the intended adoptive parents that the agreement grants either or both parents the right to seek to enforce the postadoption contact agreement;

(9) an acknowledgment that once the adoption is finalized, the court shall presume that the adoptive parent's judgment concerning the best interests of the child is correct;

(10) the finality of the termination of parental rights and of the adoption shall not be affected by implementation of the provisions of the postadoption contact agreement; and

(11) a disagreement between the parties or litigation brought to enforce or modify the agreement shall not affect the validity of the termination of parental rights or the adoption.

(d) A copy of the order approving the postadoption contact agreement and the postadoption contact agreement shall be filed with the Probate Division of the Superior Court with the petition to adopt filed under 15A V.S.A. Article 3, and, if the agreement specifies a role for the Adoption Registry, with the Registry.

(e) The order approving a postadoption contact agreement shall be a separate order from the final order terminating parental rights.

(f) The executed postadoption contact agreement shall become final upon legal finalization of an adoption under 15A V.S.A. Article 3.

Sec. 11. 15A V.S.A. Article 9 is added to read:

ARTICLE 9. ENFORCEMENT, MODIFICATION, AND TERMINATION OF POSTADOPTION CONTACT AGREEMENTS

§ 9-101. ENFORCEMENT, MODIFICATION, AND TERMINATION OF
POSTADOPTION CONTACT AGREEMENTS

(a) An adoptive parent may petition the Court to modify or terminate a postadoption contact agreement entered into under 33 V.S.A. § 5124 if the adoptive parent believes the best interests of the child are being compromised by the terms of the agreement. In an action brought under this section, the burden of proof shall be on the adoptive parent to show by clear and convincing evidence that the modification or termination of the agreement is in the best interests of the child.

(b) A former parent may petition for enforcement of a postadoption contact agreement entered into under 33 V.S.A. § 5124 if the adoptive parent is not in compliance with the terms of the agreement. In an action brought under this section, the burden of proof shall be on the former parent to show by a preponderance of the evidence that enforcement of the agreement is in the best interests of the child.

(c) A disagreement between the parties or litigation brought to enforce or modify the agreement shall not affect the validity of the termination of parental rights or the adoption.

(d) The Court shall not act on a petition to modify or enforce the agreement unless the petitioner had in good faith participated or attempted to participate in mediation or alternative dispute resolution proceedings to resolve the dispute prior to bringing the petition for enforcement.

(e) Parties to the proceeding shall be the individuals who signed the original agreement created under 33 V.S.A. § 5124. The adopted child, if 14 years of age or older, may also participate. The Department for Children and Families shall not be required to be a party to the proceeding and the Court shall not order further investigation or evaluation by the Department.

(f) The Court may order the communication or contact be terminated or modified if the Court deems such termination or modification to be in the best interests of the child. In making a best interests determination, the Court may consider:

(1) the protection of the physical safety of the adopted child or other members of the adoptive family;

(2) the emotional well-being of the adopted child;

(3) whether enforcement of the agreement undermines the adoptive parent's parental authority; and

(4) whether, due to a change in circumstances, continued compliance

with the agreement would be unduly burdensome to one or more of the parties.

(g) A Court-imposed modification of the agreement may limit, restrict, condition, or decrease contact between the former parents and the child, but in no event shall a Court-imposed modification serve to expand, enlarge, or increase the amount of contact between the former parents and the child or place new obligations on the adoptive parents.

(h) No testimony or evidentiary hearing shall be required, although the Court may, in its discretion, hold a hearing. A hearing held to enforce, modify, or terminate an agreement for postadoption contact shall be confidential. Documentary evidence or offers of proof may serve as the basis for the Court's decision regarding enforcement, modification, or termination of an agreement.

(i) Failure to comply with the agreement or petitioning the Court to enforce, modify, or terminate an agreement shall not form the basis for an award of monetary damages.

(j) An agreement for postadoption contact or communication under 33 V.S.A. § 5124 shall cease to be enforceable on the date the adopted child turns 18 years of age or upon dissolution of the adoption.

Sec. 12. 33 V.S.A. § 152 is amended to read:

§ 152. ACCESS TO RECORDS

(a) The Commissioner may obtain from the Vermont Crime Information Center the record of convictions of any person to the extent required by law or the Commissioner has determined by rule that such information is necessary to regulate a facility or individual subject to regulation by the Department or to carry out the Department's child protection obligations under chapters 49–55 of this title. The Commissioner shall first notify the person whose record is being requested.

* * *

Sec. 13. 33 V.S.A. § 6911 is amended to read:

§ 6911. RECORDS OF ABUSE, NEGLECT, AND EXPLOITATION

(a) Information obtained through reports and investigations, including the identity of the reporter, shall remain confidential and shall not be released absent a court order, except as follows:

(1) The investigative report shall be disclosed only to: the Commissioner or person designated to receive such records; persons assigned by the Commissioner to investigate reports; the person reported to have abused, neglected, or exploited a vulnerable adult; the vulnerable adult or his or her representative; the Office of Professional Regulation when deemed

appropriate by the Commissioner; the Secretary of Education when deemed appropriate by the Commissioner; the Commissioner for Children and Families or designee, for purposes of review of expungement petitions filed pursuant to section 4916c of this title; a law enforcement agency; the State's Attorney, or the Office of the Attorney General, when the Department believes there may be grounds for criminal prosecution or civil enforcement action, or in the course of a criminal or a civil investigation. When disclosing information pursuant to this subdivision, reasonable efforts shall be made to limit the information to the minimum necessary to accomplish the intended purpose of the disclosure, and no other information, including the identity of the reporter, shall be released absent a court order.

* * *

(c) The Commissioner or ~~the Commissioner's~~ designee may disclose Registry information only to:

* * *

(5) the Commissioner for Children and Families; or ~~the Commissioner's~~ designee; for purposes related to:

(A) the licensing or registration of facilities and individuals regulated by the Department for Children and Families; and

(B) the Department's child protection obligations under chapters 49-55 of this title.

* * *

Sec. 14. 33 V.S.A. § 4916c is amended to read:

§ 4916c. PETITION FOR EXPUNGEMENT FROM THE REGISTRY

(a)(1) A Except as provided in this subdivision, a person whose name has been placed on the Registry prior to July 1, 2009 and has been listed on the Registry for at least three years may file a written request with the Commissioner, seeking a review for the purpose of expunging an individual Registry record. A person whose name has been placed on the Registry on or after July 1, 2009 and has been listed on the Registry for at least seven years may file a written request with the Commissioner seeking a review for the purpose of expunging an individual Registry record. The Commissioner shall grant a review upon request.

(2) A person who is required to register as a sex offender on a state's sex offender registry shall not be eligible to petition for expungement of his or her Registry record during the period in which the person is subject to sex offender registry requirements.

(b)(1) The person shall have the burden of proving that a reasonable person would believe that he or she no longer presents a risk to the safety or well-being of children.

(2) Factors to be considered by the The Commissioner shall include consider the following factors in making his or her determination:

~~(1)~~(A) the nature of the substantiation that resulted in the person's name being placed on the Registry;

~~(2)~~(B) the number of substantiations, ~~if more than one~~;

~~(3)~~(C) the amount of time that has elapsed since the substantiation;

~~(4)~~(D) the circumstances of the substantiation that would indicate whether a similar incident would be likely to occur;

~~(5)~~(E) any activities that would reflect upon the person's changed behavior or circumstances, such as therapy, employment, or education; ~~and~~

~~(6)~~(F) references that attest to the person's good moral character; and

(G) any other information that the Commissioner deems relevant.

* * *

* * * Municipal and County Government; Special Investigative
Units; Mission and Jurisdiction * * *

Sec. 15. 24 V.S.A. § 1940 is amended to read:

§ 1940. ~~TASK FORCES; SPECIALIZED~~ SPECIAL INVESTIGATIVE
UNITS; BOARDS; GRANTS

(a) Pursuant to the authority established under section 1938 of this title, and in collaboration with law enforcement agencies, investigative agencies, victims' advocates, and social service providers, the Department of State's Attorneys and Sheriffs shall coordinate efforts to provide access in each region of the ~~state~~ State to special investigative units ~~to investigate sex crimes, child abuse, domestic violence, or crimes against those with physical or developmental disabilities. The General Assembly intends that access to special investigative units be available to all Vermonters as soon as reasonably possible, but not later than July 1, 2009~~ which:

(1) shall investigate:

(A) an incident in which a child suffers, by other than accidental means, serious bodily injury as defined in 13 V.S.A. § 1021; and

(B) potential violations of:

- (i) 13 V.S.A. § 2602 (lewd or lascivious conduct with child);
- (ii) 13 V.S.A. chapter 60 (human trafficking);
- (iii) 13 V.S.A. chapter 64 (sexual exploitation of children); and
- (iv) 13 V.S.A. chapter 72 (sexual assault); and

(2) may investigate:

(A) an incident in which a child suffers:

(i) bodily injury, by other than accidental means, as defined in 13 V.S.A. § 1021; or

(ii) death;

(B) potential violations of:

(i) 13 V.S.A. § 2601 (lewd and lascivious conduct);

(ii) 13 V.S.A. § 2605 (voyeurism); and

(iii) 13 V.S.A. § 1304 (cruelty to a child); and

(C) an incident involving potential domestic violence or crimes against those with physical or developmental disabilities.

(b) A ~~task force or specialized~~ special investigative unit organized and operating under this section may accept, receive, and disburse in furtherance of its duties and functions any funds, grants, and services made available by the State of Vermont and its agencies, the federal government and its agencies, any municipality or other unit of local government, or private or civic sources. Any employee covered by an agreement establishing a special investigative unit shall remain an employee of the donor agency.

(c) A ~~Specialized~~ Special Investigative Unit Grants Board is created which shall ~~be comprised of~~ comprise the Attorney General, the Secretary of Administration, the Executive Director of the Department of State's Attorneys and Sheriffs, the Commissioner of Public Safety, the Commissioner for Children and Families, a representative of the Vermont Sheriffs' Association, a representative of the Vermont Association of Chiefs of Police, the Executive Director of the Center for Crime Victim Services, and the Executive Director of the Vermont League of Cities and Towns. ~~Specialized~~ Special investigative units organized and operating under this section ~~for the investigation of sex crimes, child abuse, elder abuse, domestic violence, or crimes against those with physical or developmental disabilities~~ may apply to the Board for a grant or grants covering the costs of salaries and employee benefits to be expended during a given year for the performance of unit duties as well as unit operating costs for rent, utilities, equipment, training, and supplies. Grants under this

section shall be approved by a majority of the entire Board and shall not exceed 50 percent of the yearly salary and employee benefit costs of the unit. Preference shall be given to grant applications which include the participation of the Department of Public Safety, the Department for Children and Families, sheriffs' departments, community victims' advocacy organizations, and municipalities within the region. Preference shall also be given to grant applications which promote policies and practices that are consistent across the State, including policies and practices concerning the referral of complaints, the investigation of cases, and the supervision and management of special investigative units. However, a sheriff's department in a county with a population of ~~less~~ fewer than 8,000 residents shall upon application receive a grant of up to \$20,000.00 for 50 percent of the yearly salary and employee benefits costs of a part-time ~~specialized~~ special investigative unit investigator which shall be paid to the department as time is billed on a per hour rate as agreed by contract up to the maximum amount of the grant.

(d) The Board may adopt rules relating to grant eligibility criteria, processes for applications, awards, and reports related to grants authorized pursuant to this section. The Attorney General shall be the adopting authority.

Sec. 16. 33 V.S.A. § 4915b(e) is amended to read:

~~(e) The Department shall report to and request assistance from law enforcement in the following circumstances:~~

~~(1) investigations of child sexual abuse by an alleged perpetrator age 10 or older;~~

~~(2) investigations of serious physical abuse or neglect likely to result in criminal charges or requiring emergency medical care;~~

~~(3) situations potentially dangerous to the child or Department worker. [Repealed.]~~

Sec. 17. 33 V.S.A. § 4915 is amended to read:

§ 4915. ASSESSMENT AND INVESTIGATION

* * *

(g) The Department shall report to and receive assistance from law enforcement in the following circumstances:

(1) investigations of child sexual abuse by an alleged perpetrator 10 years of age or older;

(2) investigations of serious physical abuse or neglect requiring emergency medical care, resulting in death, or likely to result in criminal charges; and

(3) situations potentially dangerous to the child or Department worker.

(h) The Department shall report to the appropriate special investigations unit any valid allegation concerning an incident in which a child suffers, by other than accidental means:

(1) serious bodily injury as defined in 13 V.S.A. § 1021; and

(2) potential violations of:

(A) 13 V.S.A. § 2602 (lewd or lascivious conduct with child);

(B) 13 V.S.A. chapter 60 (human trafficking);

(C) 13 V.S.A. chapter 64 (sexual exploitation of children); and

(D) 13 V.S.A. chapter 72 (sexual assault).

* * * Penalties for Mandated Reporters, Public Officers, and Others * * *

Sec. 18. 33 V.S.A. § 4913 is amended to read:

§ 4913. REPORTING CHILD ABUSE AND NEGLECT; REMEDIAL ACTION

* * *

(f)(1) A person who violates subsection (a) of this section shall be fined not more than ~~\$500.00~~ \$1,000.00.

(2) A person who violates subsection (a) of this section with the intent to conceal abuse or neglect of a child shall be imprisoned not more than ~~six months~~ one year or fined not more than ~~\$1,000.00~~ \$2,000.00, or both.

(3) This section shall not be construed to prohibit a prosecution under any other provision of law.

* * *

Sec. 19. 13 V.S.A. § 3006 is amended to read:

§ 3006. NEGLECT OF DUTY BY PUBLIC OFFICERS

A ~~state~~ State, county, town, village, fire district, or school district officer who ~~wilfully~~ willfully neglects to perform the duties imposed upon him or her by law, either express or implied, shall be imprisoned not more than one year or fined not more than ~~\$1,000.00~~ \$2,000.00, or both.

Sec. 20. 13 V.S.A. § 1304 is amended to read:

§ 1304. CRUELTY TO CHILDREN UNDER 10 BY ONE OVER 16 A CHILD

A person over ~~the age of~~ 16 years of age, having the custody, ~~charge~~ or care of a child ~~under 10 years of age~~, who ~~wilfully~~ willfully assaults, ~~ill treats~~, neglects, ~~or~~ abandons or exposes ~~such the~~ child, or causes ~~or procures such the~~ child to be assaulted, ~~ill treated~~, neglected, abandoned, or exposed, in a manner to cause ~~such the~~ child unnecessary suffering, or to endanger his or her health, shall be imprisoned not more than two years or fined not more than ~~\$500.00~~ \$2,000.00, or both.

Sec. 21. 18 V.S.A. § 4236 is amended to read:

§ 4236. MANUFACTURE OR CULTIVATION

(a)(1) A person knowingly and unlawfully manufacturing or cultivating a regulated drug shall be imprisoned not more than 20 years or fined not more than \$1,000,000.00, or both.

(2) A person who violates subdivision (1) of this subsection shall be imprisoned for not more than 30 years or fined not more than \$1,500,000.00, or both, if:

(A) the regulated drug is methamphetamine; and

(B) a child is actually present at the site of methamphetamine manufacture or attempted manufacture.

(b) This section shall not apply to the cultivation of marijuana.

* * * Department for Children and Families; Policies * * *

Sec. 22. THE DEPARTMENT FOR CHILDREN AND FAMILIES;
POLICIES, PROCEDURES, AND PRACTICES

(a) The Commissioner for Children and Families shall:

(1) ensure that Family Services Division policies, procedures, and practices are consistent with the best interests of the child and are consistent with statute;

(2) ensure that Family Services Division policies, procedures, and practices are consistent with each other and are applied in a consistent manner, in all Department offices and in all regions of the State;

(3) by September 30, 2015, develop and implement a Family Services Division policy requiring a six-month supervision period by the Department after a child is returned to the home from which he or she was removed due to abuse or neglect;

(4) develop metrics as to the appropriate case load for social workers in the Family Services Division that take into account the experience and training of a social worker, the number of families and the total number of children a

social worker is responsible for, and the acuity or difficulty of cases;

(5) ensure that all employees assigned to carry out investigations of child abuse and neglect have training or experience in conducting investigations and have a master's degree in social work or an equivalent degree, or relevant experience;

(6) ensure that all Family Services Division employees receive training on:

(A) relevant policies, procedures, and practices; and

(B) the employees' legal responsibilities and obligations;

(7) develop policies, procedures, and practices to:

(A) ensure the consistent sharing of information, in a manner that complies with statute, treatment providers, courts, State's Attorneys, guardians ad litem, law enforcement, and other relevant parties;

(B) encourage treatment providers and all agencies, departments, and other persons that support recovery to provide regular treatment progress updates to the Commissioner;

(C) ensure that courts have all relevant information in a timely fashion, and that Department employees file paperwork and reports in a timely manner;

(D) require that the Family Services Division assess a child's safety if:

(i) the child remains in a home from which other children have been removed; or

(ii) the child remains in the custody of a parent or guardian whose parental rights as to another child have been terminated;

(E) require that all persons living in a household, or that will have child care responsibilities, will be assessed for criminal history and potential safety risks whenever a child who has been removed from a home is returned to that home;

(F) increase the number of required face-to-face meetings between Family Services Division social workers and children;

(G) increase the number of required home visits and require unannounced home visits by Family Services Division social workers;

(H) improve information sharing with mandatory reporters who have an ongoing relationship with a child;

(I) ensure that mandatory reporters are informed that any confidential information they may receive cannot be disclosed to a person who is not authorized to receive that information;

(J) ensure all parties authorized to receive confidential information are informed of their right to receive that information; and

(K) apply results-based accountability or other data-based quality measures to determine if children who receive services from the Family Services Division in different areas of the State have different outcomes and the reasons for those differences.

(b) On or before September 30, 2015, the Commissioner shall submit a written response to the House Committees on Human Services and on Judiciary and to the Senate Committees on Health and Welfare and on Judiciary with the Commissioner's response to the issues in subsection (a) of this section, including the language of any new or amended policies and procedures.

* * * Legislature; Establishing a Joint Legislative Child Protection Oversight Committee * * *

Sec. 23. JOINT LEGISLATIVE CHILD PROTECTION OVERSIGHT COMMITTEE

(a) Creation. There is created a Joint Legislative Child Protection Oversight Committee.

(b) Membership. The Committee shall be composed of the following eight members, who shall be appointed each biennial session of the General Assembly:

(1) Four current members of the House of Representatives, not all from the same political party, who shall be appointed by the Speaker of the House; and

(2) Four current members of the Senate, not all from the same political party, who shall be appointed by the Committee on Committees.

(3) In addition to one member-at-large appointed from each chamber, one appointment shall be made from the following committees:

(A) House Committee on Education;

(B) Senate Committee on Education;

(C) House Committee on Judiciary;

(D) Senate Committee on Judiciary;

(E) House Committee on Human Services; and

(F) Senate Committee on Health and Welfare.

(c) Powers and duties.

(1) The Committee shall:

(A) Exercise oversight over Vermont's system for protecting children from abuse and neglect, including:

(i) evaluating whether the branches, departments, agencies, and persons that are responsible for protecting children from abuse and neglect are effective;

(ii) determining if there are deficiencies in the system and the causes of those deficiencies;

(iii) evaluating which programs are the most cost-effective;

(iv) determining whether there is variation in policies, procedures, practices, and outcomes between different areas of the State and the causes and results of any such variation; and

(v) evaluating the measures recommended by the Working Group to Recommend Improvements to CHINS Proceedings established in Sec. 24 of this act to ensure that once a child is returned to his or her family, the court or the Department for Children and Families may continue to monitor the child and family where appropriate.

(B) At least annually, report on the Committee's activities and recommendations to the General Assembly.

(2) The Committee may review and make recommendations to the House and Senate Committees on Appropriations regarding budget proposals and appropriations relating to protecting children from abuse and neglect.

(d) Assistance. The Committee shall have the administrative, technical, and legal assistance of the Office of Legislative Council.

(e) Retaliation. No person who is an employee of the State of Vermont, or of any State, local, county, or municipal department, agency, or person involved in child protection, and who testifies before, supplies information to, or cooperates with the Committee shall be subject to retaliation by his or her employer. Retaliation shall include job termination, demotion in rank, reduction in pay, alteration in duties and responsibilities, transfer, or a negative job performance evaluation based on the person's having testified before, supplied information to, or cooperated with the Committee.

(f) Meetings.

(1) The member appointed from the Senate Committee on Health and Welfare shall call the first meeting of the Committee.

(2) The Committee shall select a Chair, Vice Chair, and Clerk from among its members and may adopt rules of procedure. The Chair shall rotate biennially between the House and the Senate members. A quorum shall consist of five members.

(3) When the General Assembly is in session, the Committee shall meet at the call of the Chair. The Committee may meet six times during adjournment, and may meet more often subject to approval of the Speaker of the House and the President Pro Tempore of the Senate.

(g) Reimbursement. For attendance at meetings during adjournment of the General Assembly, members of the Committee shall be entitled to per diem compensation and reimbursement of expenses pursuant to 2 V.S.A. § 406.

(h) Sunset. On June 1, 2018 this section (creating the Joint Legislative Child Protection Oversight Committee) is repealed and the Committee shall cease to exist.

* * * Improvements to CHINS Proceedings * * *

Sec. 24. WORKING GROUP TO RECOMMEND IMPROVEMENTS TO CHINS PROCEEDINGS

(a) Creation. There is created a working group to recommend ways to improve the efficiency, timeliness, and process of Children in Need of Care or Supervision (CHINS) proceedings.

(b) Membership. The Working Group shall be composed of the following members:

(1) the Chief Administrative Judge or designee;

(2) the Defender General or designee;

(3) the Attorney General or designee;

(4) the Commissioner for Children and Families or designee;

(5) the Executive Director of State's Attorneys and Sheriffs or designee; and

(6) a guardian ad litem who shall be appointed by the Chief Superior Judge.

(c) Powers and duties. The Working Group shall study and make recommendations concerning:

(1) how to ensure that statutory time frames are met in 90 percent of

proceedings:

(2) how to ensure that attorneys, judges, and guardians ad litem appear on time and are prepared;

(3) how to monitor and improve the performance and work quality of attorneys, judges, and guardians ad litem;

(4) how to ensure that there is a sufficient number of attorneys available to handle all CHINS cases, in all regions of the State, in a timely manner;

(5) the role of guardians ad litem, and how to ensure their information is presented to, and considered by, the court;

(6) how to expedite a new proceeding that concerns a family with repeated contacts with the child protection system;

(7) whether the adoption of American Bar Association standards for attorneys who work in the area of child abuse and neglect would be appropriate;

(8) the feasibility of creating a statewide Family Drug Treatment Court initiative to improve substance abuse treatment and child welfare outcomes;

(9) whether requiring a reunification hearing would improve child welfare outcomes;

(10) how and whether to provide financial assistance to individuals seeking to mediate a dispute over a postadoption contact agreement; and

(11) any other issue the Working Group determines is relevant to improve the efficiency, timeliness, process, and results of CHINS proceedings.

(d) Assistance. The Working Group shall have the administrative, technical, and legal assistance of the Office of the Attorney General. The Working Group may consult with any persons necessary in fulfilling its powers and duties.

(e) Report. On or before November 1, 2015, the Working Group shall report its findings and recommendations to the Joint Legislative Child Protection Oversight Committee, the House Committees on Human Services and on Judiciary, and the Senate Committees on Health and Welfare and on Judiciary.

(f) Meetings and sunset.

(1) The Attorney General or designee shall call the first meeting of the Working Group.

(2) The Working Group shall select a chair from among its members at

the first meeting.

(3) The Working Group shall cease to exist on November 2, 2015.

* * * Effective Dates * * *

Sec. 25. EFFECTIVE DATES

This act shall take effect on July 1, 2015, except for this section, Sec. 22 (Department for Children and Families; policies, procedures, and practices), Sec. 23 (Joint Legislative Child Protection Oversight Committee), and Sec. 24 (Working Group to Recommend Improvements to CHINS Proceedings) which shall take effect on passage.

(Committee vote: 11-0-0)

(For text see Senate Journal 2/25/15)

S. 141

An act relating to possession of firearms

Rep. Jewett of Ripton, for the Committee on **Judiciary**, recommends that the House propose to the Senate that the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 13 V.S.A. § 4017 is added to read:

§ 4017. PERSONS PROHIBITED FROM POSSESSING FIREARMS;
CONVICTION OF VIOLENT CRIME

(a) A person shall not possess a firearm if the person has been convicted of a violent crime.

(b) A person who violates this section shall be imprisoned not more than two years or fined not more than \$1,000.00, or both.

(c) This section shall not apply to a person who is exempt from federal firearms restrictions under 18 U.S.C. § 925(c).

(d) As used in this section:

(1)(A) "Firearm" means:

(i) any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive;

(ii) the frame or receiver of any such weapon; or

(iii) any firearm muffler or firearm silencer.

(B) "Firearm" shall not include an antique firearm.

(2) “Antique firearm” means:

(A) Any firearm (including any firearm with a matchlock, flintlock, percussion cap, or similar type of ignition system) manufactured in or before 1898.

(B) Any replica of any firearm described in subdivision (A) of this subdivision (2) if the replica:

(i) is not designed or redesigned for using rimfire or conventional centerfire fixed ammunition; or

(ii) uses rimfire or conventional centerfire fixed ammunition that is no longer manufactured in the United States and which is not readily available in the ordinary channels of commercial trade.

(C) Any muzzle loading rifle, muzzle loading shotgun, or muzzle loading pistol which is designed to use black powder or a black powder substitute and which cannot use fixed ammunition. As used in this subdivision (C), “antique firearm” shall not include a weapon which incorporates a firearm frame or receiver, a firearm which is converted into a muzzle loading weapon, or any muzzle loading weapon which can be readily converted to fire fixed ammunition by replacing the barrel, bolt, breechblock, or any combination thereof.

(3) “Violent crime” means:

(A)(i) A listed crime as defined in subdivision 5301(7) of this title other than:

(I) lewd or lascivious conduct as defined in section 2601 of this title;

(II) recklessly endangering another person as defined in section 1025 of this title;

(III) operating a vehicle under the influence of intoxicating liquor or other substance with either death or serious bodily injury resulting as defined in 23 V.S.A. § 1210(f) and (g);

(IV) careless or negligent operation resulting in serious bodily injury or death as defined in 23 V.S.A. § 1091(b);

(V) leaving the scene of an accident resulting in serious bodily injury or death as defined in 23 V.S.A. § 1128(b) or (c); or

(VI) a misdemeanor violation of chapter 28 of this title, relating to abuse, neglect, and exploitation of vulnerable adults; or

(ii) a comparable offense and sentence in another jurisdiction if

the offense prohibits the person from possessing a firearm under 18 U.S.C. § 922(g)(1) or 18 U.S.C. § 921(a)(20).

(B) An offense involving sexual exploitation of children in violation of chapter 64 of this title, or a comparable offense and sentence in another jurisdiction if the offense prohibits the person from possessing a firearm under 18 U.S.C. § 922(g)(1) or 18 U.S.C. § 921(a)(20).

(C) A violation of 18 V.S.A. § 4231(b)(2), (b)(3), or (c) (selling, dispensing, or trafficking cocaine); 4232(b)(2) or (b)(3) (selling or dispensing LSD); 4233 (b)(2), (b)(3), or (c) (selling, dispensing, or trafficking heroin); 4234(b)(2) or (b)(3) (selling or dispensing depressants, stimulants, and narcotics); 4234a(b)(2), (b)(3), or (c) (selling, dispensing, or trafficking methamphetamine); 4235(c)(2) or (c)(3) (selling or dispensing hallucinogenic drugs); 4235a(b)(2) or (b)(3) (selling or dispensing Ecstasy), or a comparable offense and sentence in another jurisdiction if the offense prohibits the person from possessing a firearm under 18 U.S.C. § 922(g)(1) or 18 U.S.C. § 921(a)(20).

(D) A conviction of possession with intent to distribute a controlled substance other than marijuana in another jurisdiction if the offense prohibits the person from possessing a firearm under 18 U.S.C. § 922(g)(1) or 18 U.S.C. § 921(a)(20).

Sec. 2. 20 V.S.A. § 2307 is amended to read:

§ 2307. FIREARMS RELINQUISHED PURSUANT TO RELIEF FROM ABUSE ORDER; STORAGE; FEES; RETURN

* * *

(g)(1) A law enforcement agency, an approved federally licensed firearms dealer, or any other person that takes possession of firearms, ammunition, or weapons for storage purposes pursuant to this section shall not release the items to the owner without a court order unless the items are to be sold pursuant to subdivision (2)(A) of this subsection. If a court orders the release of firearms, ammunition, or weapons stored under this section, the law enforcement agency or firearms dealer in possession of the items shall make them available to the owner within three business days of receipt of the order and in a manner consistent with federal law. The Supreme Court may promulgate rules under 12 V.S.A. § 1 for judicial proceedings under this subsection.

(2)(A)(i) If the owner fails to retrieve the firearm, ammunition, or weapon and pay the applicable storage fee within 90 days of the court order releasing the items, the firearm, ammunition, or weapon may be sold for fair

market value. Title to the items shall pass to the law enforcement agency or firearms dealer for the purpose of transferring ownership.

(ii) The law enforcement agency or approved firearms dealer shall make a reasonable effort to notify the owner of the sale before it occurs. In no event shall the sale occur until after the ~~court~~ Court issues a final relief from abuse order pursuant to 15 V.S.A. § 1103.

(iii) As used in this subdivision (2)(A), “reasonable effort” shall ~~include providing notice to the owner at least 21 days prior to the date of the sale via first class mail, certified restricted delivery~~ mean notice shall be served as provided for by Rule 4 the Vermont Rules of Civil Procedure.

* * *

Sec. 3. REPORT; VERMONT GUN SHOP PROJECT

(a) On or before January 31, 2016, the Department of Mental Health shall report to the Senate and House Committees on Judiciary, the Senate Committee on Health and Welfare, and the House Committee on Human Services on the establishment of a Vermont version of the New Hampshire Gun Shop Project. The Department may satisfy the reporting requirement by providing testimony on the issue to the committees identified in this subsection.

(b) For purposes of the report required by this section, the Department of Mental Health shall consult with:

(1) the Vermont Suicide Prevention Coalition;

(2) the Vermont Federation of Sportsmen’s Clubs, and other firearms owners organizations;

(3) gun shop owners and other firearms retailers; and

(4) any other parties that may assist in preparing the report.

Sec. 4. 13 V.S.A. § 4824 is added to read:

§ 4824. REPORTING; NATIONAL INSTANT CRIMINAL BACKGROUND CHECK SYSTEM

(a) If the Court finds that a person is a person in need of treatment pursuant to section 4822 of this title, the Court Administrator shall within 48 hours report the name of the person subject to the order to the National Instant Criminal Background Check System, established by Section 103 of the Brady Handgun Violence Prevention Act of 1993. The report shall include only information sufficient to identify the person, the reason for the report, and a statement that the report is made in accordance with 18 U.S.C. § 922(g)(4).

(b) A report required by this section shall be submitted notwithstanding 18 V.S.A. § 7103 or any other provision of law.

(c) A report required by this section is confidential and exempt from public inspection and copying under the Public Records Act except as provided in subsection (d) of this section. The report shall not be used for any purpose other than for submission to the National Instant Criminal Background Check System pursuant to this section, where it may be used for any purpose permitted by federal law, including in connection with the issuance of a firearm-related permit or license.

(d) A copy of the report required by this section shall be provided to the person who is the subject of the report. The report shall include written notice to the person who is the subject of the report that the person is not permitted to possess a firearm.

Sec. 5. 18 V.S.A. § 7103 is amended to read:

§ 7103. DISCLOSURE OF INFORMATION

(a) All certificates, applications, records, and reports, other than an order of a court made for the purposes of this part of this title, and directly or indirectly identifying a patient or former patient or an individual whose hospitalization or care has been sought or provided under this part, together with clinical information relating to such persons shall be kept confidential and shall not be disclosed by any person except insofar:

(1) as the individual identified, the individual's health care agent under section 5264 of this title, or the individual's legal guardian, if any ~~(or, or,~~ if the individual is an unemancipated minor, his or her parent or legal ~~guardian); guardian~~ shall consent in writing; ~~or~~

(2) as disclosure may be necessary to carry out any of the provisions of this part; ~~or~~

(3) as a court may direct upon its determination that disclosure is necessary for the conduct of proceedings before it and that failure to make disclosure would be contrary to the public interest; or

(4) as the disclosure is made to comply with the reporting requirements of section 7617a of this title or 13 V.S.A. § 4824.

* * *

Sec. 6. 18 V.S.A. § 7617a is added to read:

§ 7617a. REPORTING; NATIONAL INSTANT CRIMINAL BACKGROUND CHECK SYSTEM

(a) If the Court issues a hospitalization order pursuant to subdivision 7617(b)(1) or (2) of this title or a nonhospitalization order pursuant to subdivision 7617(b)(3), the Court Administrator shall within 48 hours report the name of the person subject to the order to the National Instant Criminal Background Check System, established by Section 103 of the Brady Handgun Violence Prevention Act of 1993. The report shall include only information sufficient to identify the person, the reason for the report, and a statement that the report is made in accordance with 18 U.S.C. § 922(g)(4).

(b) A report required by this section shall be submitted notwithstanding section 7103 of this title or any other provision of law.

(c) A report required by this section is confidential and exempt from public inspection and copying under the Public Records Act except as provided in subsection (d) of this section. The report shall not be used for any purpose other than for submission to the National Instant Criminal Background Check System pursuant to this section, where it may be used for any purpose permitted by federal law, including in connection with the issuance of a firearm-related permit or license.

(d) A copy of the report required by this section shall be provided to the person who is the subject of the report. The report shall include written notice to the person who is the subject of the report that the person is not permitted to possess a firearm.

Sec. 7. 13 V.S.A. § 4825 is added to read:

§ 4825. PERSONS PROHIBITED BY FEDERAL LAW FROM POSSESSING FIREARMS DUE TO MENTAL ILLNESS; PETITION FOR RELIEF FROM DISABILITY

(a)(1) A person who is prohibited from possessing firearms by 18 U.S.C. § 922(g)(4) may petition the Family Division of the Superior Court for an order that the person be relieved from the firearms disability imposed by that section. When the petition is filed the petitioner shall provide notice and a copy of the petition to the State's Attorney or the Attorney General, who shall be the respondent in the matter. The petition shall be filed in the county where the offense or the adjudication occurred.

(2)(A) The Court shall grant a petition filed under this section without hearing if neither the State's Attorney nor the Attorney General file an objection within six months after receiving notice of the petition. If the Court grants the petition pursuant to this subdivision, the Court shall make findings and issue an order in accordance with this section.

(B) The Court shall grant the petition filed under this section without

hearing if the petitioner and the respondent stipulate to the granting of the petition. The respondent shall file the stipulation with the Court, and the Court shall make findings and issue an order in accordance with this section.

(b) In determining a petition filed under this section, unless the petition is granted pursuant to subdivision (a)(2) of this subsection, the Court shall consider:

(1) the circumstances regarding the firearms disabilities imposed on the person by 18 U.S.C. § 922(g)(4);

(2) the petitioner's record, including his or her mental health and criminal history records; and

(3) the petitioner's reputation, as demonstrated by character witness statements, testimony, or other character evidence.

(c)(1) The Court shall grant a petition filed under this section if it finds that the petitioner has demonstrated by clear and convincing evidence that the person is no longer a person in need of treatment as defined in 18 V.S.A. § 7101(17).

(2) As the terms are used in this subsection, a finding that the person is no longer a person in need of treatment shall also mean that granting the relief will not be contrary to the public interest.

(d) If a petition filed under this section is granted, the Court shall enter an order declaring that the basis under which the person was prohibited from possessing firearms by 18 U.S.C. § 922(g)(4) no longer applies. The Court shall inform the Federal Bureau of Investigation, the U.S. Attorney General, and the National Instant Criminal Background Check System of its decision.

(e) If the Court denies the petition, the petitioner may appeal the denial to the Vermont Supreme Court. The appeal shall be on the record, and the Supreme Court may review the record de novo.

(f) If the Court denies a petition filed under this section, no further petition shall be filed by the person until at least one year after the order of the trial court, or of the Supreme Court if an appeal is taken, becomes final.

(g) At the time a petition is filed pursuant to this section, the respondent shall give notice of the petition to a victim of the offense, if any, who is known to the respondent. The victim shall have the right to offer the respondent a statement prior to any stipulation or to offer the Court a statement. The disposition of the petition shall not be unnecessarily delayed pending receipt of a victim's statement. The respondent's inability to locate a victim after a reasonable effort has been made shall not be a bar to granting a petition.

(h) As used in this section, “reasonable effort” means attempting to contact the victim by first class mail at the victim’s last known address and by telephone at the victim’s last known telephone number.

Sec. 8. REPORTING; DEPARTMENT OF MENTAL HEALTH; COURT ADMINISTRATOR

(a) The Department of Mental Health shall report to the Court Administrator on or before October 1, 2015 the names of all persons under the custody of the Department who on that date are subject to a hospitalization order issued pursuant to 18 V.S.A. § 7617(b)(1) or (2), a nonhospitalization order issued pursuant to 18 V.S.A. § 7617(b)(3), or an order that a person is a person in need of treatment pursuant to 13 V.S.A. § 4822. The Court Administrator shall report the names provided pursuant to this section to the National Instant Criminal Background Check System, established by Section 103 of the Brady Handgun Violence Prevention Act of 1993. The report shall include only information sufficient to identify the person, the reason for the report, and a statement that the report is made in accordance with 18 U.S.C. § 922(g)(4).

(b) Reports required by this section shall be submitted notwithstanding 18 V.S.A. § 7103 or any other provision of law.

(c) A report required by this section is confidential and exempt from public inspection and copying under the Public Records Act except as provided in subsection (d) of this section. The report shall not be used for any purpose other than for submission to the National Instant Criminal Background Check System pursuant to this section, where it may be used for any purpose permitted by federal law, including in connection with the issuance of a firearm-related permit or license.

(d) A copy of the report required by this section shall be provided to the person who is the subject of the report. The report shall include written notice to the person who is the subject of the report that the person is not thereafter permitted to possess a firearm.

Sec. 9. REPORTS

(a) On or before January 15, 2018, the Court Administrator, in consultation with the Commissioner of Mental Health and the Executive Director of State’s Attorneys and Sheriffs, shall report to the Senate and House Committees on Judiciary, the Senate Committee on Health and Welfare, and the House Committee on Human Services on data compiled with respect to the legal requirements established by this act. The report shall include:

(1)(A) The number of persons reported to the National Instant Criminal

Background Check System since October 1, 2015 pursuant to:

(i) 13 V.S.A. § 4824 (persons in custody of the Department of Mental Health as the result of an order issued under 13 V.S.A. § 4822); and

(ii) 18 V.S.A. § 7617a (persons in custody of the Department of Mental Health as the result of a hospitalization order issued under 18 V.S.A. § 7617(b)(1) or (2), or a nonhospitalization order issued under 18 V.S.A. § 7617(b)(3)); and

(B) with respect to each of the persons reported to the National Instant Criminal Background Check System pursuant to 13 V.S.A. § 4824 and 18 V.S.A. § 7617a since October 1, 2015, whether the person filed a petition for relief from disabilities pursuant to 13 V.S.A. § 4825, and whether the petition was granted, denied, or remains pending.

(2) The total number of petitions for relief from disabilities filed pursuant to 13 V.S.A. § 4825 since October 1, 2015, and the number of those petitions that were granted, denied, and remain pending.

(b) On or before January 15, 2018, the Executive Director of State's Attorneys and Sheriffs shall report to the Senate and House Committees on Judiciary the number of persons charged with violating 13 V.S.A. § 4017 since July 1, 2015, and the number of charges that resulted in conviction, dismissal, and acquittal.

Sec. 10. EFFECTIVE DATES; APPLICABILITY

(a) Secs. 1, 2, 3, 8, 9, and this section shall take effect on July 1, 2015.

(b) Secs. 4, 5, 6, and 7 shall take effect on October 1, 2015, and shall apply to hospitalization orders issued pursuant to 18 V.S.A. § 7617(b)(1) or (2), nonhospitalization orders issued pursuant to 18 V.S.A. § 7617(b)(3), or orders that a person is a person in need of treatment pursuant to 13 V.S.A. § 4822 issued on or after that date.

(Committee vote: 7-4-0)

(For text see Senate Journal 3/25/15)

Information Notice

April 15, 2015 - 8:30 am - 10:30 am - House Chamber – House Rule 75 and Ethics Presentation by NCSL. **The House Rules require that all House members attend this presentation.**